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IN THE

SUPREME COURT OF THE UNITED STATES

No. 452

LEANDRO GOIRICELAYA UGALDE,
Petitioner

vs.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
LA CONFEDERACION DEL CANADA,

MIGUEL MORALES CALVO and MARIA OFELIA ABREU DE MORALES, his wife,
Petitioners

vs.

THE CROWN LIFE INSURANCE COMPANY,
a Canadian corporation

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

WESLEY G. CAREY
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and
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THE CROWN LIFE INSURANCE COMPANY,
a Canadian corporation

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioners request that a Writ of Certiorari be issued to review the Judgment of the Supreme Court of the State of Florida entered in the consolidated cases of

Confederation Life Association, a Canadian corporation, also known as La Confederacion Del Canada vs. **Leandro Goiricelaya Ugalde**, Case No. 32,780; **Leandro Goiricelaya Ugalde** vs. **Confederation Life Association**, a Canadian corporation, also known as La Confederacion Del Canada, Case No. 32,803; and **The Crown Life Insurance Company**, a Canadian corporation vs. **Miguel Morales Calvo, et al**, Case No. 32,792; **Miguel Morales Calvo, et al** vs. **The Crown Life Insurance Company, a Canadian corporation**, Case No. 32,849; **Confederation Life Assoc. v. Ugalde**, Case No. 32,771.

The opinions of the Florida Supreme Court are printed in Appendix hereto infra, and reported at 164 So.2d 1, 164 So.2d 3 [Ugalde] and 164 So.2d 813 [Calvo]. The decision of the District Court of Appeals, Third District of Florida, upon which the Florida Supreme Court decision was predicated and which are printed in Appendix hereto, infra are reported at 151 So.2d 315 and 151 So.2d 687, respectively.

JURISDICTION

The Judgment of the Supreme Court of Florida was entered in the **Ugalde** case on February 24, 1964. A timely filed petition for rehearing was denied by the Court under date of April 8, 1964. The Judgment of the Supreme Court of Florida was entered in the **Calvo** case under date of March 25, 1964, and a timely filed petition for rehearing was denied by that Court under date of April 25, 1964. Mr. Justice Black of this Court granted an extension of time to file this Petition, the extension expires in Ugalde on September 5, 1964 and in Calvo on September 15, 1964. [Appendix]

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257[3].

QUESTIONS PRESENTED

Whether the Florida Courts are obligated by the treaty obligations imposed by the International Monetary Fund Agreement, of which Cuba is not now a member, to apply Cuban Laws in lieu of Florida Laws, which Cuban Laws bar the collection in Florida by any national of any country, of the benefits of an insurance policy issued by a Canadian life insurance company in Cuba; or alternatively, whether a judgment entered against the insurer on a policy issued by a Canadian company which has consented to be subject to process in the State of Florida is violative of the due process clause of the Constitution of the United States.

TREATY INVOLVED

The sole treaty involved is 59 Stat. 512, T.I.A.S. 1501 and The Articles of Agreement of the International Monetary Fund Agreement [The Bretton-Woods Agreement].

STATEMENT OF THE CASE

The Respondents are Canadian life insurance companies, both of whom are authorized to do business in the State of Florida, and by being authorized, they have consented to the appointment of the Treasurer of the State of Florida as their agent for service of process in the State of Florida. Confederation of Canada Life Ins. Co. v. Arminan, Fla. 135 So.2d 867, Cert. denied, Fla., 144 So.2d 805.

The Petitioner, Ugalde, is a Cuban National, who at the time of the institution of this law suit was a resident of the State of Florida. The Petitioner, Calvo, is a refugee from Cuba, and is a resident of the State of Florida, and presently residing in the State of Florida. In 1948, Ugalde applied to Confederation Life Association for a life insurance policy. Both in the application and in the policy which was written in Spanish, it is stated that the policy would become effective upon payment of the first premium in Cuba. The policy provided that all payments were to be made in United States dollars, and the place for making payments under the policy was specified to be Havana, Cuba. The policy further provided that it was exempt to any restrictions as to residence or travels of the insured.

Insofar as Calvo, his relationship with the Respondent, The Crown Life Insurance Company, was similar except that his policy with Crown was silent as to the place of payment.

With the advent of the Castro government, both Ugalde and Calvo fled to the United States taking with them their policies of insurance, which are the subject of this law suit. They each made demand upon their respective insurance companies for the amounts due. Both companies refused to pay in the United States but did offer to pay them at their Havana Branch in Cuban pesos. The District Court of Appeals of Florida, Third District held that they could recover in Florida, but because of certain intervening Cuban laws, the policies instead of being payable in United States dollars were to be computed on the basis of the exchange value of the Cuban peso, as related to the United States dollar. Upon cer-

tiorari being granted by the Florida Supreme Court, the Florida Supreme Court stated that it approved of the rationale of the opinion of the District Court of Appeals, Third District, but held that by reason of the International Monetary Fund Agreement to which the United States and Cuba were members as of the date of the opinion, the contracts of insurance were unenforceable in the United States and ordered that the lower court dismiss the complaint of the Petitioners. The Supreme Court of Florida's decision is predicated solely upon its interpretation of the obligations imposed by the International Monetary Fund Agreement.

REASONS FOR GRANTING THE WRIT

Subsequent to the rendition of the original opinions of the Florida Supreme Court in this matter, Cuba withdrew from the International Monetary Fund. The provisions of the Agreement, and particularly Article VIII (2)(b) are for the benefits of member states and not for the benefit of private parties. Since Cuba is no longer a member state of the Fund, and since the date of proposed relief determines the applicability of Article VIII, a decree granting any recovery to the Petitioners will not violate the provisions of the Agreement. See **Stephens vs. Zivnostenska Banka National Corporation,** 140 N.Y.S. 2d 323, 326. The Florida Supreme Court did not, as the Referee did in **Stephens,** "with mindful foresight (provide) that this phase could be opened if (Cuba) withdrew voluntarily or otherwise from the Fund organization."

All Canadian insurance companies who do or have done business in Cuba have uniformly held that they will not pay any of these obligations in this country solely be-

cause of the Bretton-Woods Agreement, and regardless of the nationality of the owner or beneficiary of the policy. However, the companies insist that the policies are in effect, that they will be paid to the owner or beneficiary upon demand in Cuba in Cuban pesos. Further, the companies have refused to accept payments in this country or in Canada, but insist that all payments be made in Cuba. Because of the present political situation, many of the policy holders, including citizens of the United States, are precluded from going to Havana, Cuba to collect any benefits and under current U. S. Treasury regulations, transfer of any money from the United States to Cuba is illegal. Thus, all policy holders residing in the United States find themselves the owners of policies which are in danger of default because of failure to pay premiums, but if payment be made, albeit illegally, such policy holders, regardless of nationality, find themselves unable to collect any of the benefits of the policy. This is a wrong for which there should be a remedy. At the very least, the respective rights and obligations of the parties should be determined.

There is a direct conflict in the instant case and the New York case, **Stephens v. Zivnostenska Banka National Corporation, Czechoslovakia** being involved in the New York case and Cuba being involved in the instant case.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

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APPENDIX

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
La Confederacion Del Canada,

Petitioner,

v.

Leandro Goiricelaya UGALDE,

Respondent.

Leandro Goiricelaya UGALDE,

Cross-Petitioner,

v.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
La Confederacion Del Canada,

Cross-Respondent.

Nos. 32780, 32803.

Supreme Court of Florida.

Feb. 24, 1964.

Rehearing Denied April 8, 1964.

Shutts, Bowen, Simmons, Prevatt & Boureau, Cotton Howell, Miami and Covington & Burling and John G. Laylin, Washington, D. C., for petitioner and cross-respondent.

Nestor Morales, Miami, for respondent and cross-petitioner.

CALDWELL, Justice.

[1] Inasmuch as the District Court of Appeal, Third District, has certified this cause to this Court, as a decision passing "upon a question * * * of great public interest," we have jurisdiction.

[2] Petitioner, a Canadian corporation, in 1948, issued a life insurance policy to the respondent, a resident of Havana, Cuba. The policy required that all sums payable thereunder be paid in Havana, Republic of Cuba, in legal currency of the United States. The policy was converted from one payable in dollars to a policy payable in pesos by the Legal Tender Law of 1948 (Cuban Law #13 of December 23, 1948, effective in 1951 by virtue of Cuban Decree #1384). The District Court of Appeal properly held the policy was a Cuban policy covered by Cuban law.

Some 13 years after the issuance of the policy, when requested to pay the cash surrender value, the company offered to pay in Cuban pesos in Havana, but refused to pay in United States dollars. The insured sued in Dade County, Florida. Both parties moved for summary judgment. Plaintiff's motion was not augmented by evidentiary matter. Defendant's motion was supported by an affidavit to the effect that it was authorized and required to pay the obligation in Cuban legal tender. Summary judgment was entered against defendant requiring payment in dollars of the cash surrender value of the policy as of March 15, 1962. The District Court of Appeal, Third District, affirmed judgment for the plaintiff, but

remanded with directions to enter judgment for the plaintiff in dollars "for such sum as shall represent and equal the value, based on the rate of exchange on the date of the original demand, of the 13,825.53 Cuban pesos * * * the demanded cash surrender value under the policy."[1]

The District Court of Appeal opinion, supra, includes an adequate statement of facts and a scholarly and extended treatment of applicable law. We disagree with the judgment of the District Court but, to obviate burdensome repetition, we refer to the authorities cited in and the rationale of that opinion with approval. A similar cause was considered by the Louisiana Court of Appeal.[2]

[3] The Cuban laws relating to the establishment of currency control are similar to those which have been enacted in this country with respect to our own currency and are not violative of United States policy. The Florida Courts are obligated by the International Monetary Fund Agreement[3] to apply the cited Cuban laws to the contract here involved.

[4] The petitioner having, upon demand, offered to make payment of the cash surrender value of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against the petitioner. That portion of the judgment of the District Court of Appeal which directed the entry of the judgment for the plaintiff is reversed and the cause remanded

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[1]151 So.2d 315 (Fla.App.3rd 1963).

[2]Theye Y Ajuria v. Pan American Life Insurance Co., 154 So.2d 450 (La.App.4th 1963).

[3]Dec. 27, 1945, 60 Stat. 1401, T.1501.

with instructions that the Circuit Court be directed to dismiss the complaint.

It is so ordered.

DREW, C. J., and THOMAS, ROBERTS, THORNAL and O'CONNELL, JJ., concur.

ON PETITION FOR REHEARING
PER CURIAM.

By petition for rehearing the respondent points out that the Louisiana Court of Appeal decision in Theye Y. Ajuria v. Pan American Life Insurance Company, 154 So. 2d 450, was reversed by the Supreme Court of Louisiana on February 24, 1964, 161 So.2d 70. The opinion of the Louisiana Court of Appeal was not vital to our original decision, so the reversal by the Supreme Court of that state does not change our conclusion. The petition for rehearing is therefore denied.

DREW, C. J., and THOMAS, ROBERTS, THORNAL, O'CONNELL and CALDWELL, JJ., concur.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
La Confederacion Del Canada,

Appellant,

v.

Leandro Goiricelaya UGALDE,

Appellee.

No. 32771.

Supreme Court of Florida.
Feb. 24, 1964.

Appeal to District Court of Appeal, Third District.

Shutts, Bowen, Simmons, Prevatt & Boureau, Cotton Howell, Miami, and Covington & Burling, John G. Laylin, George V. Allen, Jr., Washington, D. C., for appellant.

Nestor Morales, Miami, for appellee.

PER CURIAM.

The record and briefs in this cause have been examined. The questions raised are the same as those raised in the companion cases of Confederation Life Association v. Ugalde, and Ugalde v. Confederation Life Association, Fla., 164 So.2d 1, which were consolidated with this case for purposes of review. The matter having been disposed of by certiorari, the appeal in this case is accordingly dismissed.

DREW, C. J., and THOMAS, ROBERTS, THORNAL, O'CONNELL and CALDWELL, JJ., concur.

The CROWN LIFE INSURANCE COMPANY,
a Canadian corporation,

Petitioner,

v.

Miguel Morales CALVO et al.,

Respondents.

Miguel Morales CALVO et al.,

Cross-Petitioners,

v.

The CROWN LIFE INSURANCE COMPANY,
a Canadian corporation,

Cross-Respondents.

Nos. 32792, 32849.

Supreme Court of Florida.

March 25, 1964.

Rehearing Denied April 21, 1964.

Certiorari and Cross-Petition for Certiorari to the District Court of Appeal, Third District.

Shutts, Bowen, Simmons, Prevatt & Boureau and Cotton Howell, Miami, Covington & Burling, John G. Laylin, Washington, D. C., for petitioner and cross-respondents.

Nestor Morales, Miami, for cross-petitioner and respondents.

PER CURIAM.

Conflict certiorari is granted. The decision of the District Court of Appeal herein, 151 So.2d 687, having been found to be in conflict with Confederation Life Association v. Ugalde, 164 So.2d 1, 164 So.2d 3, recently decided by this court, is quashed and the cause remanded for disposition not inconsistent with the views expressed in the Ugalde case, supra.

It is so ordered.

DREW, C. J., and THOMAS, ROBERTS, THORNAL, O'CONNELL, CALDWELL and ERVIN, JJ., concur.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

January Term, A. D. 1963

CASE NO. 62-295

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
LA CONFEDERACION DEL CANADA,
Appellant,

vs.

LEANDRO GOIRICELAYA UGALDE,
Appellee.

Opinion filed March 26, 1963.

An Appeal from the Circuit Court for Dade County, Robert L. Floyd, Judge.

Shutts, Bowen, Simmons, Prevatt & Boureau and Cotton Howell; John G. Laylin (Washington, D. C.), for appellant.

Nestor Morales, for appellee.

Before PEARSON, C.J., and CARROLL and HORTON, JJ.

CARROLL, Judge.

This is an appeal by the defendant below from an adverse summary judgment. Appellant, a Canadian corporation, had issued a $20,000 life insurance policy to a resident of Havana, Cuba, in 1948. Some thirteen years later, when requested to pay the cash surrender value, the company offered to pay in Cuban pesos in Havana, but refused to pay in United States dollars. The insured sued the company in Dade County, Florida. Both parties moved for summary judgment. Plaintiff's motion was not augmented by evidentiary matter. Defendant's motion was supported by an affidavit of an expert to the effect that under Cuban law the defendant was authorized and required to pay the obligation in Cuban currency legal tender. Summary judgment was entered against the defendant for $13,825.52,[1] plus certain costs.

[1]That sum represented the amount of the cash surrender value under the policy, in dollars. It was stipulated that "The total cash surrender value of the policy as at March 15th, 1962 was 13,825.53." Plaintiff claimed and received judgment for United States dollars in that amount. Defendant demanded the right to pay only in Cuban pesos.

The determinative question in the trial court as on this appeal was whether the defendant's obligation under the insurance policy to pay the cash surrender value, at the time demanded, was to be measured in United States dollars, or, as the defendant contended, in Cuban pesos.[2]

The material facts as disclosed by the pleadings were not in dispute. The application for the life insurance policy was made by the appellee in 1948 in Cuba. Both in the application and in the policy which was written in Spanish it was stated that the policy would become effective upon payment of the first premium. The insured received delivery and paid the first premium in Havana. The policy provided that all payments were to be made in United States dollars, and the place for making payments under the policy was specified to be Havana, Cuba.

Subsequent to the issuance of the insurance policy, the Cuban government made certain laws and decrees which removed United States dollars as legal tender and substituted the Cuban currency of legal tender, for discharge of obligations payable in Cuba. Cuban Law No. 13 of December 23, 1948, provided that beginning one year after the Banco Nacional de Cuba should commence operations the currency of the United States of America would cease to be legal tender and to have debt redeeming force in Cuba. The Bank began its operations on April 27, 1950. The one year grace period previously imposed, which would have ended April 26, 1951, was extended to June 30, 1951, by an executive order, Decree No. 1384 of April 19, 1951. That decree provided that after the end

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[2]This case does not present any question or problem of expropriation, such as concerned the court in Banco Nacional de Cuba v. Sabbatino, 2 Cir.1962, 307 F.2d 845.

of such extended grace period obligations could be discharged in Cuban currency regardless of contract provisions for payment in United States dollars. The provisions of Decree No. 1384 pertinent to that feature were as follows:

> "Second. Beginning on the date on which the United States currency shall cease to be legal tender and have debt redeeming force in the territory of the Nation, all obligations contracted or payable in the national territory shall be expressed and settled in national currency pursuant to the provisions of Law No. 13, of December 23, 1948, subject to the no exception other than those specified in Articles 96, 98 and 113 thereof.
>
> "The debtors of obligations not included in said exceptions and the payment whereof in United States currency has been stipulated or agreed upon prior to the cessation of such legal tender status and such debt redeeming force, may settle such obligations at par through the delivery of national currency in the same amounts as those previously expressed in United States dollars."

Thereupon the company notified its policy holders in Cuba that under said Decree No. 1384 amounts theretofore provided to be payable in United States dollars would be paid "in Cuban pesos one for one." The plaintiff made subsequent premium payments in Cuban pesos, and the company accepted them at par with the dollar as it was required to do by the Cuban law.

On October 2, 1959, the government of Cuba, under

the rule of the dictatorship of Fidel Castro, enacted Law No. 568, which forbade the export of currency or transfer of funds abroad except for cases authorized by the Currency Stabilization Fund of Cuba. Unauthorized transfers were made felonies and it was provided that companies which are "presumed to have infringed the provisions of this law" may be "intervened." Thereafter, on February 23, 1961, the Cuban government enacted Law No. 930, which provided that the Banco Nacional de Cuba should regulate the issuance of currency, and such currency (Cuban pesos) was to be the only legal tender and was to be accepted in payment of any obligation payable in Cuba, and further provided that obligations which by agreement were made payable in another currency must be settled and paid in Cuban legal tender. The demand for payment of the cash surrender value was made October 11, 1961, after enactment of the laws referred to above. The complaint in this suit was filed November 3, 1961.

The appellant contends that the contract is controlled by Cuban law, and that payments thereunder may and in fact must be with Cuban pesos at par with the dollar.

Appellee argues that the contract is governed by the law of Florida, and that it would be against the public policy of the State of Florida to recognize and enforce in behalf of the defendant insurance company the right, as conferred by Cuban law, to discharge the obligation in pesos.

The policy did not specify the law of any particular jurisdiction to govern it. The contract was made in Cuba[3] and by its terms was to be performed there.[4] Neither Florida nor any jurisdiction other than Cuba had any significant contacts with regard to the obligations of the insurance policy so as to justify or require the contract to be governed by the law of Florida or such other jurisdiction.[5] Under the above conditions, it is held uniformly, and in Florida, that when the place of the making and the place of the performance are the same, the law of that jurisdiction determines and controls the validity, interpretation, and the rights and obligations under such a contract. Thomson v. Kyle, 39 Fla. 582, 23 So. 12, 16; Connor v. Elliott, 79 Fla. 513, 85 So. 164, cert.den. 254 U.S. 665(1920); Brown v. Case, 80 Fla. 703, 86 So. 684; In the Matter of Magnus Harmonica Corporation, 3 Cir. 1959, 262 F.2d 515, 518, note 8; Annot., 50 A.L.R.2d 254, 257; 11 Am. Jur., Conflict of Laws, § 117, p. 401; Restatement, Conflict of Laws, §§ 346, 358.

When a suit is brought on a contract in a jurisdiction other than the one which governs the rights and obligations thereunder, a defense lawfully vested under the law of the latter jurisdiction may not be ignored by the forum if that

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[3]The policy provided that it became effective upon delivery and payment of the first premium. The first premium was paid in Cuba. That fixed Cuba as the place of the making of the contract. See Equitable Life Assur. Soc. of the United States of America v. Mc Ree, 75 Fla. 257, 78 So. 22; Columbian National Life Insurance Co. v. Lanigan, 154 Fla. 760, 19 So.2d 67.

[4]The policy expressly provided payments thereunder were to be made in Havana, Cuba.

[5]There is authority that does not regard as conclusive the place of making or performance but rather lays emphasis upon the law of the place that has the most significant contacts with the matter in dispute. See Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954).

state had no significant connection with the contract obligations. Rejection of such rights under the contract, asserted as a defense, is a deprivation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights of Florida. Home Ins. Co. v. Dick, 281 U.S. 397, 50 S.Ct. 338, 74 L.Ed. 926, 74 A.L.R. 701(1930); Hartford Acc. & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S.Ct. 634, 78 L.Ed. 1178, 92 A.L.R. 928 (1934); Holderness v. Hamilton Fire Ins. Co. of New York, S.D.Fla.1944, 54 F.Sup. 145. Compare Clay v. Sun Insurance Office Ltd., 363 U.S. 207, 4 L.Ed.2d 1170, 80 S.Ct. 1222(1960), vacating and remanding, 5 Cir. 1959, 265 F.2d 522, on holding the constitutional issue to have been decided prematurely. In Hartford Acc. & Indemnity Co. v. Delta & Pine Land Co., supra, a suretyship contract, held to have been governed by the laws of Tennessee, was sued upon. The Mississippi court refused to give effect to a provision of the contract, valid under the law of Tennessee, which absolved the defendant insurance company from liability. In reversing a judgment for the plaintiff, the Supreme Court of the United States said:

> "The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations by reason of the state's alleged interest in the transaction? We think not. Conceding that ordinarily a state may prohibit performance within its borders even of a contract validly made elsewhere, if the performance would violate its laws (Home Insurance Co. v. Dick, supra (281 U.S. 408, 74 L.Ed. 933, 50 S.Ct. 338, 74 A.L.R. 701)), it may not, on grounds of

> policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. * * *"

In the instant case, the defendant asserted as a defense its right to pay in Cuban pesos at par and the obligation of the insured to accept payment in such form, as provided for in the insurance contract as modified by the laws and executive decrees of Cuba. The trial court rejected the defense. In so doing, the trial court erred and deprived appellant of due process of law.

As a sovereign nation, Cuba was entitled to establish a national currency and require its use in discharge of obligations governed by its law. Guaranty Trust Co. v. Henwood, 307 U S. 247, 83 L.Ed. 1266, 59 S.Ct. 847 (1939). And Cuba had the power to declare that which was legal tender for the discharge of such obligations. Legal tender cases, Knox v. Lee and Parker v. Davis, 79 U.S. (12 Wall.) 457, 20 L.Ed. 287 (1870); Juilliard v. Greenman, 110 U.S. 421, 448, 28 L.Ed. 204, 214 (1884). That power could be exercised by Cuba in its sovereign capacity even though to do so altered the terms and impaired the obligations of such contracts theretofore made. Norman v. Baltimore & Ohio R. Co., 294 U.S. 240, 79 L.Ed. 885, 55 S.Ct. 407, 95 A.L.R. 1352 (1935); Guaranty Trust Co. v. Henwood, supra. First, the Cuban government in furtherance of its fiscal policy was entitled to and did make laws relating to its currency and legal tender which effectively changed the contract from one payable in dollars to one payable in Cuban legal tender at one unit (peso) per dollar. Second, as a result thereof, under the terms of the insurance contract as so altered,

the obligation of the defendant insurance company to pay the cash surrender value under the policy became an obligation to pay in Cuban legal tender.

In Guaranty Trust Co. v. Henwood, supra, there was involved a question of whether obligations due under certain railroad company bonds could be required to be paid in guilders (amounting to $37,335,525.12) or in then current United States dollars ($21,638,000.00). The bonds, made in this country, covenanted for payment to be made in the United States in dollars, or in certain other countries in their currency at designated rates of exchange, including in Holland at 2,490 Holland guilders per $1,000.00. Although payment was made permissible in other places as well as in the United States and in other currencies as well as in dollars, there were other provisions, for mortgage trustees to have their office in the United States and for performance of their duties here, which, coupled with the provision for payment here, prompted the United States Supreme Court to hold that "Both the mortgage and bonds are domestic obligations, and the law of this country must determine their interpretation, their nature, and the obligations enforceable under them." 83 L.Ed. 1274. The court then held that the obligations were within the scope of those encompassed by the Joint Congressional Resolution of June 5, 1933, which altered the bond contracts to make them payable in United States legal tender (devalued dollars) for which it provided. And the court in that case also rejected the argument that such impairment of the bond contracts was a taking of property in violation of constitutional guarantees. As to that, the court said (83 L.Ed. 1276-77):

"There remains the argument of petitioners

that the Resolution, if construed to forbid enforcement of the option to demand payment in guilders, nullifies contractual rights in violation of the Fifth Amendment to the Constitution. But, as has already been pointed out, the contracts on which the claims for guilders rest are domestic obligations, controlled by and to be interpreted under the law of the United States. And contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress. These bonds and their securing mortgage were created subject not only to the exercise by Congress of its constitutional power 'to coin money, regulate the value thereof, and of foreign coin,' but also to 'the full authority of the Congress in relation to the currency.' The extent of that authority of Congress has been recently pointed out: * * * [in Norman v. Baltimore & Ohio R. Co., supra]

"Under these powers, Congress was authorized —as it did in the Resolution—to establish, regulate and control the national currency and to make that currency legal tender money for all purposes, including payment of domestic dollar obligations with options for payment in foreign currencies. Whether it was 'wise and expedient' to do so was, under the Constitution, a determination to be made by the Congress. The Resolution that made these creditors' bonds dischargable in the same United States legal tender which other creditors in this country must accept, does not contravene the Fifth Amendment."

The decision of the United States Supreme Court in the case of Norman v. Baltimore & Ohio R. Co., supra, upheld the inherent power of a national government over its monetary system, and approved legislation which provided that obligations could be discharged by prescribed legal tender of less value than that called for in certain existing government and private contract obligations. Also, the court in that case recognized such action was taken for the express purpose of permitting debts to be paid with devalued money, and that such purpose together with other purposes such as for uniformity in currency, represented policies of the government which were not inappropriate. It was expressly held in that case that clauses of contracts calling for payment in money of greater value than the Congress thus provided for could not operate to frustrate that inherent power of the sovereign.

At the outset the Supreme Court of the United States announced that the case presented the "question of validity of the Joint Resolution of the Congress, of June 5, 1933, with respect to the 'gold clauses' of private contracts for the payment of money. 48 Stat. at L. 112." And the court then summarized the Resolution as it had reference to the question under examination, as follows:

> "This Resolution, the text of which is set forth in the margin, declares that 'every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby' is 'against public policy.' Such provisions in obligations

thereafter incurred are prohibited. The Resolution provides that 'Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.'"

The Supreme Court then held that the power of the United States government in relation to its currency did not depend on the express constitutional power "To coin money, regulate the value thereof and of foreign coin," but that the power to regulate its currency was derived from "all the related powers conferred upon the Congress and appropriate to achieve 'the great objects for which the government was framed, — a national government, with sovereign powers.'" Further, (79 L.Ed. at 901) the Court held: "The conclusion was that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the Government, and that no obligation of a contract 'can extend to the defeat' of that authority."

On the specific question of whether the federal government could invalidate provisions of existing contracts by permitting payment in a currency medium of less value than that expressly provided for in a contract, the Supreme Court of the United States in the Norman case upheld the power. The court made reference to a number of instances of governmental change, impairment and even abrogation of contracts, such as in the course of regulating commerce affecting shippers and carriers. It was held that the exercise of such powers was not limited to

authority from specific power grants to Congress in the Constitution, and the court said: "There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt."

Moreover, the problem which prompted the government of the United States to provide for the discharge of "gold clause" contract obligations in currency or legal tender of lesser value, was shown in the Norman case to have been the result of devaluaton of the dollar, — a similar situation to that presented in Cuba when the American dollar exceeded the value of the Cuban peso. In this regard it was said in the Norman case (79 L.Ed. at 906):

> "The devaluation of the dollar placed the domestic economy upon a new basis. In the currency as thus provided, States and municipalities must receive their taxes; railroads, their rates and fares; public utilities, their charges for services. The income out of which they must meet their obligations is determined by the new standard. Yet, according to the contentions before us, while that income is thus controlled by law, their indebtedness on their 'gold bonds' must be met by an amount of currency determined by the former gold standard. Their receipts, in this view, would be fixed on one basis; their interest charges, and the principal of their obligations, on another. It is common knowledge that the bonds issued by these obligors have generally contained gold clauses, and presumably they account for a large

part of the outstanding obligations of that sort. It is also common knowledge that a similar situation exists with respect to numerous industrial corporations that have issued their 'gold bonds' and must now receive payments for their products in the existing currency. It requires no acute analysis or profound economic inquiry to disclose the dislocation of the domestic economy which would be caused by such a disparity of conditions in which, it is insisted, those debtors under gold clauses should be required to pay one dollar and sixty-nine cents in currency while respectively receiving their taxes, rates, charges and prices on the basis of one dollar of that currency."

When this country acted in 1933, as was the case in Cuba in 1949 (effective in 1951), the dollar had not been devalued but devaluation was in prospect, and similarly the Cuban peso was not then devalued but later became so in relation to the American dollar. Thus in the Norman case the court said: "It is true that when the Joint Resolution was adopted on June 5, 1933, * * * the dollar had not yet been devalued. But devaluation was in prospect and a uniform currency was intended. * * * The weight of the gold dollar was not to be reduced by more than fifty percentum. * * * The order of the President of January 31, 1934, fixed the weight of the gold dollars at 15 5/21 grains nine-tenths fine as against the former standard of 25 8/10 grains nine-tenths fine."

The argument that the Cuban government, in providing a uniform currency and making obligations of contracts payable there dischargeable in its designated

legal tender, was taking action repugnant to the policy of this country, is wholly without merit. There is no Florida Statute defining a policy on which the court could deprive the defendant of its rights under the Cuban contract as such rights are fixed and determined under Cuban law. But even were there such a statute, its effectiveness would be open to question. See Home Insurance Co. v. Dick, supra; Hartford Acc. & Indemnity Co. v. Delta & Pine Land Co., supra; Clay v. Sun Insurance Office Ltd., supra; Holderness v. Hamilton Fire Insurance Co. of New York, supra. Not only is there an absence of any Florida law or policy against a sovereign nation prescribing its legal tender and making all obligations payable there dischargeable only therein, but the same process when employed by the United States government in 1933 was held by our Supreme Court to be dictated by our government's policy favoring it.[6] This also is shown by the opinion in the Norman case, where the court, after discussing the devaluation of the dollar as outlined in the quotation appearing just above, said (79 L.Ed. at 906): "If the gold clauses interfered with the congressional policy and hence could be invalidated, there appears no constitutional objection to that action by Congress in anticipation of the determination of the value of the currency."

With apology for unduly extending this opinion by extensive quotations from the Norman case, it is deemed sufficiently enlightening and authoritative on the problem

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[6]Furthermore, appellee was a citizen of Cuba who had made a contract in that country for performance there. "It cannot be against the public policy of this State to hold nationals to the contracts which they have made in their own country to be performed there according to the laws of that country." Dougherty v. The Equitable Life Assur. Soc. of the United States of America, 266 N.Y. 71, 90, 193 N.E. 897 (1934). See also Holzer v. Deutche Reichbahn-Tesellschaft, 277 N.Y. 474, 14 N.E.2d 798 (1938).

presented in the instant case to quote the ending of the Norman opinion, in which the Supreme Court of United States repeated and summarized its holding that the national power to regulate currency and prescribe legal tender for payment of debts, in furtherance of policies respecting the monetary system, prevails over contrary contract clauses, which, otherwise, would operate to limit or deprive the sovereign of the exercise of that power. In this connection, in ending that important decision, the Supreme Court said:

> "We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration. Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. In the light of abundant experience, the Congress was entitled to choose such a uniform monetary system, and to reject a dual system, with respect to all obligations within the range of the exercise of its constitutional authority. The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority. Dismissing that untenable assumption, the facts must be faced. We think that it is clearly shown that these clauses interfere with the exertion of

> the power granted to the Congress and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed."

We adopt that reasoning and apply it to this contract. Thus the government of Cuba was entitled to provide by law as it did in 1949 and later for a uniform currency, eliminating United States dollars as legal tender in Cuba, specifying its own currency legal tender and first authorizing then later requiring that obligations payable there be discharged in Cuban pesos at par, one for one with the dollar. This contract between a Cuban national and a Canadian company was indigenous to Cuba. Its provision for payments in United States dollars was eliminated by the sovereign and there were substituted contract provisions that United States dollars would not be legal tender for discharge of the obligations under the policy and that such obligations were payable in Cuban pesos at par. The insured availed himself of that right by paying premiums in Cuban pesos. No lawful basis has been disclosed on which the trial court could reject unliked terms of the contract as modified by the Cuban currency laws or deny to the defendant its asserted right to meet its obligations under the policy in such pesos.

By cross assignment appellee contends the trial court should have allowed attorney fees under § 627.0127, Fla. Stat., F.S.A. The statute contains a proviso as follows:

> "Except, that without any prejudice or effect whatsoever as to suits relating to other kinds of insurance, no such attorney fee shall be allowed in any such suit based on a claim arising

> under a life insurance policy or annuity contract if such suit was commenced prior to expiration of sixty days after proof of the claim was duly filed with the insurer."

The trial court was not in error in that matter. The proviso became applicable. Suit was filed in less than 60 days after demand for payment of cash surrender value.

It does not follow, however, that the trial court erred, as appellant contends, by refusing to dismiss the action. The courts of Florida were open to the Cuban citizen, while here, to seek redress for a wrong remediable in law, under Section 4 of the Declaration of Rights of Florida. The error was not in entertaining suit and granting the summary judgment for plaintiff, but in the amount of the judgment.

For the reasons stated, the judgment is affirmed in part and reversed in part, and the cause is remanded with directions to the circuit court to enter judgment for the plaintiff in United States dollars for such sum as shall represent and equal the value, based on the rate of exchange on the date of the original judgment, of the 13,825.53 Cuban pesos with which under the contract as controlled by Cuban law the defendant insurance company was entitled and required to pay the demanded cash surrender value under the policy.

Affirmed in part, reversed in part, and remanded.

HORTON, Judge, concurring in part and dissenting in part.

I respectfully dissent from the opinion and conclusions reached by the majority in this case, except as to the denial of an award of attorney's fees.

In essence, the majority opinion delineates the facts and then states the well established rule that when the place of making and place of performance of a contract are the same, the law of that jurisdiction controls as to the validity, interpretation, rights and obligations thereunder, absent a significant contact with, or overriding considerations of, public policy at the forum. It further states that since the contract, and by this is meant the contract *sued upon*, was made and performable in Cuba and had no significant contacts with Florida or any other jurisdiction, Cuban law is controlling. As I read the majority opinion, the gold clause cases are not a part of the *ratio decidendi* but are merely cited and discussed to illustrate the untenability of the appellee's contention that the Cuban government, in providing a uniform currency and making obligations of contracts payable there dischargeable in its designated legal tender, was taking action repugnant to the public policy of the United States or Florida. In my opinion, the majority has stated the law correctly but erred in its application.

The provisions of a life insurance policy concerning payment of a cash surrender value constitute no more than a continuing irrevocable offer by the company, and no completed contract to pay such value exists unless and until this offer is accepted by the insured in accordance with its tenor and terms. Pacific States Life Ins. Co. v. Bryce, 67 F.2d 710 (10 Cir. 1933), 91 A.L.R. 1446; United States v. Garland, 122 F.2d 118 (4 Cir. 1941), cert.den. 314 U.S. 685, 62 S.Ct. 189, 86 L.Ed. 548; Roth v. Kaptow-

sky, 393 Ill. 484, 63 N.E.2d 664 (1946); Gerber v. Equitable Life Assur. Soc. of United States, 1 Ill.App.2d 272, 117 N.E.2d 393 (1954); Langley v. New York Life Insurance Co., 273 S.W.2d 567 (Ky. 1954); Lauer v. Michigan Life Ins. Co., 268 Mich. 614, 256 N.W. 567 (1934); Mutual Life Ins. Co. v. Kaiser, 10 So.2d 766 (Miss. 1942); Minning v. Prudential Ins. Co. of America, 88 Ohio App. 339, 95 N.E.2d 269 (1950); see also 29 Am.Jur., Insurance, § 631, p. 916; 45 C.J.S., Insurance, § 460b, p. 123.

The case at bar involves two contracts. The first of these was made in Cuba in 1948 and insured the life of the appellee. Among other things it contained a continuing irrevocable offer by the appellant to enter into a contract to pay a determinable cash surrender value to the appellee upon his acceptance thereof. The second was made in Florida on October 11, 1961, when the appellee accepted the offer by making formal demand for the payment of the cash surrender value. It was at this time and place that the obligation of the appellant to pay the cash surrender value became a fixed and perfected obligation—a matured debt with all other obligations merged into it. See Mutual Life Ins. Co. v. Kaiser, supra, and numerous cases cited therein. This latter contract was the one breached by the appellant's refusal to pay and the one *sued upon* by the appellee. Since it was made in Florida, Florida law should control and the appellee is entitled to recover a judgment in the amount of $13,825.32, plus interest and costs in United States dollars as expressly provided in the contract of insurance.

Even assuming arguendo that the agreement to pay cash surrender value should be governed by the laws of Cuba, I think the result would be the same. That is, the

appellee would be entitled to payment in United States dollars. The Cuban laws or decrees upon which the appellant relies do not require a different result.

The 1948 law simply displaced United States dollars as legal tender currency for the redemption of debts *in the territory of Cuba.* The acts of 1959 and 1961 simply granted power to the Banco Nacional de Cuba to regulate the issuance of currency and established that "the coins and bills issued by the Banco Nacional de Cuba shall be the only one of legal tender and shall be admitted *in payment of any obligation payable in the Republic.* When they have been or are agreed upon in another currency, they shall be settled and paid necessarily in currency of legal tender." These acts only prohibit *the export of currency or securities or the transfer of funds to points abroad and do not attempt by their scope, inference or implication, to affect funds which may have already been located abroad or possessed by nationals in other states.*

The appellant is a foreign insurance company authorized to do business in Florida. This court and the Supreme Court of Florida have held that resident aliens may, if jurisdiction can be legally obtained, bring suits against such insurers in the courts of Florida to recover on policies such as the one involved here. See Confederation of Canada L. Ins. Co. v. Vega y Arminian, Fla.App. 1961, 135 So.2d 867, cert.den. with opinion, 144 So.2d 805. Having been authorized to do business in Florida, the appellant is required, and we assume it does, to maintain as trust deposits with public officials, or trust institutions approved by the insurance commissioner, a minimum of $300,000 or its equivalent in assets in compliance with

the terms of § 624.0211, Fla.Stat., F.S.A. Section 624.0211 (3), Fla.Stat., F.S.A., provides:

> "Any such deposit made in this state shall be held for the protection of the insurer's policyholders or policyholders and creditors in the United States . . . "

Thus, the appellant has funds in Florida and the United States which it could use to discharge its obligation to the appellee and would not be forced to violate the laws and decrees of Cuba by exporting currency or transporting funds from Cuba to the United States. See South America Petroleum Corp. v. Colombia Petroleum Co., 31 N.Y.S.2d 771.

As indicated by the opinions expressed herein, I would affirm the judgment.

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, Appellant,

v.

Miguel Morales CALVO and Maria Ofelia Abreau De Morales, his wife, Appellees.

No. 62-373.

District Court of Appeal of Florida.

Third District.

April 9, 1963.

Appeal from Circuit Court, Dade County; Grady L. Crawford, Judge.

Shutts, Bowen, Simmons, Prevatt & Boureau and Cotton Howell, Miami, and John G. Laylin, Washington, D. C., for appellant.

Nestor Morales, Miami, for appellees.

Before PEARSON, TILLMAN, C. J., and BARKDULL, and HENDRY, JJ.

PER CURIAM.

The appellant appeals an adverse summary final judgment rendered in favor of the appellees, Cuban nationals.

The cause of action was instituted by the appellees, as plaintiffs, to collect the cash surrender value of an insurance policy issued by the appellant. The summary final judgment in this cause was rendered prior to the decision of this court in Confederation Life Association v. Ugalde, Fla.App. 1963, 151 So.2d 315. The policy and the facts in the instant case are almost indentical as those recited in Confederation Life Association, supra. Therefore, based upon said authority, the summary final judgment here under review is reversed insofar as it awarded a judgment to the plaintiff in dollars, and it is remanded with directions to enter a judgment for the plaintiffs in United States dollars for a sum equal to the cash surrender value of the policy in Cuban pesos as of the date demand was made. Revillon v. Demme, 114 Misc. 1, 185 N.Y.S. 443.

Affirmed in part, reversed in part, and remanded with directions.

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1963

LEANDRO GOIRICELAYA UGALDE,

Petitioner,

vs

CONFEDERATION LIFE ASSOCIATION, ETC.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 5th, 1964

/s/ HUGO L. BLACK
Associate Justice of the Supreme Court of the United States.

Dated this 15th day of June, 1964.

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1963

MIGUEL MORALES CALVO, ET AL.,

Petitioners,

vs

CROWN LIFE INSURANCE CO.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 15th, 1964.

/s/ HUGO L. BLACK
Associate Justice of the Supreme Court of the United States.

Dated this 15th day of June, 1964.

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No. 452

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Supreme Court of the United States

OCTOBER TERM, 1964

LEANDRO GOIRICELAYA UGALDE,
Petitioner,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Respondent.

MIGUEL MORALES CALVO and MARIE OFELIA ABREU DE MORALES, his wife,
Petitioners,

v.

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENTS IN OPPOSITION

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Supreme Court of the United States

OCTOBER TERM, 1964

No. 452

LEANDRO GOIRICELAYA UGALDE,
Petitioner,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Respondent.

MIGUEL MORALES CALVO and MARIE OFELIA ABREU DE MORALES, his wife,
Petitioners,

v.

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the decisions of the Supreme Court of Florida, holding that no cause of action has arisen for a breach of insurance contracts so long as the insurers have not refused to make payment in accordance with the law governing the contracts, rest on an adequate and independent state ground.

COUNTERSTATEMENT OF THE CASE

Petitioners' statement of the case concludes with an assertion that the decisions they seek to have reviewed were predicated "solely upon" a federal question. (Petition, p. 5.) The statement is incorrect.* Moreover, Petitioners fail in their statement to mention two sets of decisions of the Supreme Court of Florida, made on Petitioners' motions in these very cases, which wholly dispel any possible doubt that the original decisions rest independently on questions of state law entirely apart from any federal question.** The omission and incorrect conclusion call for a counterstatement of the case.

Prior to 1948 Petitioners, nationals and until quite recently residents of Cuba, applied to Respondents' Cuban branches for policies of life insurance. (UR 1-4, 22-23, 34; CR 1-4, 28-29.)*** These were issued

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* The Petition contains other assertions contrary to fact. For example, it contends that the policies "are in danger of default." (Petition, p. 6) This is not true. The policies contain standard non-forfeiture provisions. (Photostatic copies of the insurance policies involved are attached to the complaints in both cases.) For present purposes it suffices to say that even if true, the contention involves questions solely of state law which have been disposed of by the Florida state courts.

** The two subsequent decisions of the Supreme Court of Florida and related materials appear in the appendix to this brief.

*** The Record before this Court consists in large part of the two records transmitted to the Supreme Court of Florida by the Clerk of the District Court of Appeal of Florida in these two cases. In this brief references designated "UR" are to the transcript of record of the District Court of Appeal in the *Ugalde* proceeding. References designated "CR" are to the transcript of record of the District Court of Appeal in the *Calvo* proceeding. References are also made in this brief to the materials included in Petitioners' appendix and to materials included in the appendix to this brief, *infra*. Certified copies of the materials included in both appendices have been filed with the Court.

in Cuba in the Spanish language and became effective there. (UR 4; CR 4.) At this time the United States dollar was legal tender in Cuba and the contracts were expressed to be payable in dollars. Shortly thereafter laws were passed and became effective substituting the Cuban peso for the dollar as legal tender for the satisfaction of debts at one peso to the dollar. (UR 15-17, 29-30; CR 17-19, 23-24.)

Later, under the Castro regime, currency control laws were enacted, making it illegal for Respondents to make payment outside of Cuba on any Cuban insurance contract. (UR 18-19, 29-30; CR 20-21, 23-24.) At that time, and until after the rendering by the Florida Supreme Court of the *Ugalde* and *Calvo* decisions of which review is here sought, Cuba and the United States were both members of the International Monetary Fund, the Articles of Agreement of which provide that the courts within one member's territory shall not enforce a foreign exchange contract in violation of certain currency control laws of another member of the Fund. (Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, art. VIII, section 2(b), 60 Stat. 1401.)

Petitioners made demand on the Respondents in Florida for the payment of the cash surrender values of the policies in dollars in the United States. (UR 2; CR 2.) Respondents refused on the ground that their obligation under the insurance contracts and applicable Cuban law was to pay in pesos in Cuba, and further, on the ground that they would be subjected to severe penalties were they to violate the Cuban currency control laws of 1961. (UR 11; CR 12.) Respondents tendered payment in pesos in Cuba. (UR

23; CR 30.) The Petitioners declined to accept such payments and brought suit in Florida.

The trial court, without opinion, granted Petitioners' motions for summary judgment. (UR 36-37; CR 31-32.) Respondents appealed to the District Court of Appeal of Florida, urging that under Florida conflict of laws rules the contracts were governed by the law of Cuba. Since under that law the obligations were peso obligations payable in Cuba, Respondents contended that no breach of contract had occurred and that therefore Petitioners had no cause of action. This fact, Respondents contended, was dispositive of the case. Respondents further argued that to ignore Respondents' defenses under Cuban law would violate the Fourteenth Amendment and to require payment here would also constitute a violation of international law including the obligations of the United States under the Articles of Agreement of the International Monetary Fund. (UR 53; CR 46.) Petitioners argued that Cuban law should be ignored and that under Florida law they were entitled to the recovery they sought. (UR 55; CR 47.)

The Florida District Court of Appeal held, citing a number of Florida cases, that under established Florida rules of conflict of laws the contracts were governed by the law of Cuba, since "neither Florida nor any jurisdiction other than Cuba had any significant contacts with regard to the obligations of the insurance policy." (Petition, p. App. 12.)* Despite its

* The opinion went on to note that for a Florida court to strike down defenses valid under the law of Cuba would contravene the Fourteenth Amendment and the Declaration of Rights of the Constitution of Florida. The opinion made no reference to any obligation of the United States as a member of the International Monetary Fund.

ruling as to the applicability of Cuban law the court awarded judgment "in United States dollars for such sum as shall represent and equal the value" of the pesos owing under the contracts. (Petition, p. App. 24.)

The Supreme Court of Florida granted certiorari.* It held that "the District Court of Appeal properly held the policy was a Cuban policy covered by Cuban law" and stated that "we refer to the authorities cited in and the rationale of that opinion with approval." (Petition, pp. App. 2, 3.) The Florida Supreme Court went on to hold that the District Court of Appeal had erred in entering judgment for Petitioners. Its opinion stated:

> "The petitioner [insurance company] having, upon demand, offered to make payment of the cash surrender value of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against petitioner [insurance company]. That portion of the judgment of the District Court of Appeal which directed the entry of the judgment for the plaintiff is reversed and the cause remanded with instructions that the Circuit Court be directed to dismiss the complaint." (Petition, pp. App. 3-4.)

Respondents had alternatively argued before the Florida Supreme Court, as they had before the District Court of Appeal, that not only Florida rules of conflict of laws, but also the Fourteenth Amendment and the International Monetary Fund Agreement, required

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* The court granted certiorari in both cases. It first decided the *Ugalde* case and then held that the *Ugalde* decision controlled the *Calvo* case. (Petition, p. App. 7.)

application of Cuban law. The District Court of Appeal had not reached the question of the significance of the Agreement. In its opinion the Supreme Court also accepted Respondents' alternative argument as to the Agreement in the following terms:

> "The Cuban laws relating to the establishment of currency control are similar to those which have been enacted in this country with respect to our own currency and are not violative of United States policy. The Florida Courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved." (Petition, p. App. 3.)

The court noted that a "similar" case had been decided by the Louisiana Court of Appeals. (*Theye y Ajuria* v. *Pan-American Life Ins. Co.*, 154 So.2d 450 (La. App. 4th 1963).)

The *Theye y Ajuria* case was subsequently reversed by the Supreme Court of Louisiana. Petitioners moved the Florida Supreme Court for a rehearing, citing the decision of the Supreme Court of Louisiana. (See p. 1a, *infra*.) Respondents, in reply, pointed out that "the reversal of the Ajuria case by the Louisiana Supreme Court has nothing to do with the Ugalde decision" because the *Ugalde* decision rested independently upon principles of state law. (See p. 4a, *infra*.) The Florida Supreme Court noted its recognition of this fact by stating in its per curiam opinion denying the petition:

> "The opinion of the Louisiana Court of Appeal was not vital to our original decision, so the reversal by the Supreme Court of that state does not change our conclusion." (Pp. 5a-6a, *infra*.)

Thereafter Cuba resigned from membership in the International Monetary Fund. Petitioners thereupon

filed with the Florida Supreme Court a "Motion to Recall the Mandate and for a Reconsideration and Modification, or Reversal of the Final Judgment." Again Petitioners argued that the Florida Supreme Court's decision depended upon the applicability of the International Monetary Fund Agreement. (See p. 7a, *infra.*) Again, Respondents' reply pointed out:

> "This Court's decision of February 24, 1964 was clearly based upon the ground that Defendant was not in breach of any contractual obligation owed Plaintiff. . . . This holding is not affected by Cuba's membership in the International Monetary Fund Agreement." (Pp. 9a, 10a, *infra.*)

The Florida Supreme Court "upon consideration" of the matters presented in Petitioners' motions ordered that they be denied. (P. 11a, *infra.*)*

REASONS FOR DENYING THE WRIT

As noted above the Florida District Court of Appeal, finding that only Cuba had any significant contacts with the insurance contracts here involved, held, citing Florida cases, that under settled Florida con-

* Photocopies of Petitioners' motions, which were circulated among the members of the Supreme Court of Florida, have been certified to this Court by the Clerk of the Supreme Court of Florida. The *Ugalde* motion carries the following marginal notation: "Deny—Monetary Fund agreement was one of two grounds for our judgment. See last paragraph of opinion." The *Calvo* motion carries the following marginal notation: "Deny—see last par of Ugalde—Monetary Fund just one ground."

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* The holding is fully consistent with conflict of laws principles applied by this Court prior to the decisions in Erie R. Co. v. Thompkins, 304 U.S. 64, and Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487. See, *e.g.*, Northwestern Mut. Life Ins. Co. v. McCue, 223 U.S. 234. Only a contrary holding would have raised a federal constitutional issue. See, *e.g.*, Home Ins. Co. v. Dick, 281 U.S. 397.

that court's opinion constituted "a scholarly and extended treatment of applicable law," and specifically noted its "approval" of "the authorities cited in and the rationale of that opinion." In so doing it squarely adopted the lower court's holding, made without any reference to or reliance upon the International Monetary Fund Agreement, that the application of Cuban law was required by Florida rules of conflict of laws. The Florida Supreme Court differed with the lower court only in recognizing that, Respondents having tendered payment of pesos in Havana, "there was no breach of contract and no cause of action * * *." (Petition, p. App. 3.)

The Supreme Court's additional observation that even apart from Florida's traditional and conventional conflict rules "the Florida courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved" constitutes at most an alternative ground of decision. Any conceivable doubt as to this fact is dispelled by the court's determination on rehearing, after reversal of an intermediate Louisiana court decision cited in its opinion that had dealt with the significance of the International Monetary Fund Agreement, that that opinion "was not vital to our original decision," and by the court's adherence to its judgment following Cuba's withdrawal from the Agreement.* Under these circumstances denial of the Petition is required by reason of this Court's

> "settled rule that where the judgment of a state court rests upon two grounds, one of which is

* There is no basis whatsoever for the assumption in Petitioners' argument that the Florida Supreme Court disagreed with the holding in Stephen v. Zivnostenska Banka, 31 Misc. 2d 45, 140 N.Y.S. 2d 323 (Sup. Ct. 1955).

federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp.* v. *Muller,* 296 U.S. 207, 210.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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The materials reproduced in this Appendix are drawn from the case of *Confederation Life Association* v. *Ugalde*. For the most part, identical petitions, motions and orders were filed and entered in the companion proceeding of *The Crown Life Insurance Company* v. *Calvo*.

APPENDIX

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Cross-Petitioner,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Petition for Rehearing

NOW COMES the Respondent and Cross-Petitioner in the above cause, LEANDRO GOIRICELAYA UGALDE, and respectfully petitions this Honorable Court, as follows:

This Honorable Court entered its Opinion herein, filed February 24, 1964, persuaded by the Louisiana intermediate Court of Appeal case, THEYE Y AJURIA v. PAN AMERICAN LIFE INS. CO., 154 So. 2d. 150.

The said Louisiana case was reversed by the Supreme Court of Louisiana on February 24, 1964. This case has not yet been reported. The Respondent and Cross-Petitioner, therefore, submits and attaches hereto a photostatic copy of the said Opinion.

The Louisiana Supreme Court in reversing the Intermediate Court of Appeal said that counsel's last argument was to the effect that the International Monetary Fund

Agreement was a defense to the action. (See Page "6" of the Opinion). The Supreme Court said:

> "* * * these laws (relied on by defendant) do not apply to cover the situation of a Cuban national enforcing an executory contract in the forum of another jurisdiction according to the terms of an obligation existing prior to the passage of these laws. Further, we do not believe that such laws and decrees can have any force and effect over the persons of these litigants who are not only without Cuba, but, as refugees, are not subject to its in personam jurisdiction. * * *"

(Pages "6" and "7" of Opinion)

WHEREFORE, the Respondent and Cross-Petitioner herein respectfully prays that this Honorable Court reconsider its opinion, based upon the fact that it relied upon an Intermediate Appeal Court case, which has now been reversed by the Supreme Court.

DATED: Miami, Florida
February 28, 1964.

NESTOR MORALES
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Miami, Florida 33131

Reply to Petition for Rehearing

Respondent and Cross-Petitioner, LEANDRO GOIRICELAYA UGALDE, has petitioned this Honorable Court for a rehearing in this cause on the ground that its decision herein, filed February 24, 1964, was "persuaded by the Louisiana Intermediate Court of Appeal case Theye y Ajuria v. Pan-American Life Ins. Co., 154 So. 2d 150" (*sic*, for 450) and

the further ground that this "Louisiana case was reversed by the Supreme Court of Louisiana on February 24, 1964."

Petitioner and Cross-Respondent, CONFEDERATION LIFE ASSOCIATION, respectfully submits that petition for rehearing should not be allowed in this case.

1. The decision of this Court was predicated first upon the principle that no breach of contract had occurred and that Respondent and Cross-Petitioner therefore had no cause of action.

2. Under established conflict of laws principles the contract in this case is governed and controlled by Cuban law and Petitioner and Cross-Respondent had valid defenses under that law.

3. This Court in addition approved the opinion of the lower court that to ignore a defense lawfully vested under the law of Cuba would be a denial of due process of law. While disagreeing with the judgment of the District Court, this Court in its opinion, as understood by Petitioner and Cross-Respondent, approved the "scholarly and extended treatment of applicable law in the opinion below." This included, we submit, the following:

> "When a suit is brought on a contract in a jurisdiction other than the one which governs the rights and obligations thereunder, a defense lawfully vested under the law of the latter jurisdiction may not be ignored by the forum if that state had no significant connection with the contract obligations. Rejection of such rights under the contract, asserted as a defense, is a deprivation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights of Florida."

4. The decision of this Court stated that "The Florida courts are obligated by the International Monetary Fund

Agreement to apply the cited Cuban laws to the contract here involved."

The Ajuria v. Pan-American Life Ins. Co. case was not cited by this Court in support of this conclusion. It was referred to by this Court simply as "a similar cause". The reversal of the Ajuria case by the Louisiana Supreme Court has nothing to do with the Ugalde decision. Assuming, arguendo, it did, the holdings mentioned in Paragraphs 1, 2 and 3 above were independently dispositive.

For the foregoing reasons it is respectfully prayed that the petition for rehearing be denied.

DATED this 6th day of March, 1964.

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By: /s/ COTTON HOWELL
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Of Counsel.
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Washington 5, D. C.

Not final until time expires to file rehearing petition and if filed, determined.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Cross-Petitioner,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Opinion filed April 8, 1964

Writs of Certiorari to the District Court of Appeal, Third District

Shutts, Bowen, Simmons, Prevatt & Boureau, Cotton Howell, Covington & Burling, and John G. Laylin (Washington 5, D. C.), for Petitioner and Cross-Respondent

Nestor Morales, for Respondent and Cross-Petitioner

On Petition for Rehearing

PER CURIAM.

By petition for rehearing the respondent points out that the Louisiana Court of Appeal decision in Theye Y. Ajuria v. Pan American Life Insurance Company, 154 So. 2d 450, was reversed by the Supreme Court of Louisiana on February 24, 1964. The opinion of the Louisiana Court of Appeal

was not vital to our original decision, so the reversal by the Supreme Court of that state does not change our conclusion. The petition for rehearing is therefore denied.

DREW, C.J., THOMAS, ROBERTS, THORNAL, O'CONNELL and CALDWELL, JJ., concur

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IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Cross-Petitioner,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Motion to Recall the Mandate and for a Reconsideration and Modification, or Reversal of the Final Judgment

COMES NOW, LEANDRO GOIRICELAYA UGALDE, by his undersigned attorneys, and moves the Court to recall the mandate heretofore entered in this matter, dated April 25, 1964 and reconsider and modify or reverse the judgment as therein entered. In support of this Motion, Movant would advise the Court that this matter had heretofore been certified to this Court by the District Court of Appeal of Florida, Third District, as being a question of great public

interest; that it is cannot be denied in view of the large number of cases that have been held in abeyance by the Circuit Court of the Eleventh Judicial Circuit, pending a determination of this matter, and the great interest in these cases as exhibited by various publications throughout the country.

The decision of this Court in this case approved the rationale of the District Court's opinion and its conclusion, with the exception that it held, because of the membership by Cuba and the United States of America in the International Monetary Fund Agreement and by the expressed provisions of that Agreement, particularly Article VIII (2)(b), the matter cannot be enforced in this country. However, subsequent to the rendition of the original opinion of this Court in this matter, Cuba withdrew from the Fund. The provisions of the Fund Agreement, particularly Article VIII, (2)(b), are for the benefit of member states, and not for the benefit of private parties. Since Cuba is no longer a member state of the Fund, and since the date of proposed relief determines the applicability of Article VIII, a decree granting recovery to the Petitioners will not now violate the provisions of the Fund Agreement. See *Stephens vs. Zivnostenska Banka National Corporation*, 140 N.Y.S. 2d 323, 326. This Court did not, as the Referee did in Stephens, "provide that this phase could be reopened if Cuba withdrew voluntarily or otherwise from the Fund organization."

To prevent manifest injustice and misinterpretation of this question of great public interest, the Supreme Court should reconsider, revise, reform, or modify its judgment to conform with the changed conditions.

This motion is filed with this Court under the authority found in the opinions of this Court in *Chapman vs. St. Stephen's Protestant Episcopal Church*, Florida 1932, 138

So. 630, and *State vs. City of Avon Park*, Fla. 1933, 151 So. 700.

Respectfully submitted,

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Attorney for Ugalde

CAREY, TERRY, DWYER, AUSTIN,
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Of Counsel

By JOSEPH A. McGOWAN
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Opposition to Motion to Recall Mandate, Etc.

On February 24, 1964 this Court rendered a final decision on the merits in this case, reversing in part the decision of the District Court of Appeal below and remanding the case with directions that the complaint be dismissed. This Court expressed its grounds for decision as follows:

> "The petitioners having, upon demand, offered to make payment of the cash surrender value of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against the petitioner."

The opinion added a second reason, referring to the treaty obligations of the United States under the International Monetary Fund Agreement not to enforce exchange contracts in violation of the currency control laws of members of the International Monetary Fund.

On February 28, 1964, Plaintiff* petitioned this Court for a rehearing, alleging that the International Monetary Fund Agreement did not preclude recovery and citing the opinion of the Supreme Court of Louisiana in the case of *Ajuria* v. *Pan-American Life Ins. Co.*** Defendant responded to this Petition for Rehearing on March 6, 1964. This Court denied Plaintiff's Petition for Rehearing on April 8, 1964. Now Plaintiff again seeks to have this Court's final decision on February 24, 1964 reconsidered, this time by motion. And once again Plaintiff's ground is that the International Monetary Fund does not require enforcement of the Cuban exchange control measures.

In the first place Plaintiff's motion should be rejected on the ground that only one petition or motion seeking reconsideration of a final decision is permitted by the Rules of this Court. Florida Appellate Rule 3.14(e) explicitly provides that after one petition for rehearing has been filed by a party "no further petition for rehearing *or motion* will be received or filed by the clerk or considered by the Court." (Emphasis added.) Plaintiff's motion is clearly in violation of this Rule.

In any event, Plaintiff's motion has no more merit than did his earlier petition for rehearing, and for the same reasons. This Court's decision of February 24, 1964 was clearly based upon the ground that Defendant was not in breach of any contractual obligation owed Plaintiff. Both this Court and the District Court of Appeal recognized that the contract was governed by Cuban law. By its own terms

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* As in Petitioner's briefs in this Court, the parties are referred to in accordance with their position in the trial court. The Plaintiff, Leandro Goiricelaya Ugalde, is the Respondent in this Court. The Defendant, Confederation Life Association, is the Petitioner in this Court.

** The *Ajuria* case involved a policy issued in New Orleans by an American company and, by the express terms of the policy, payable in New Orleans.

the contract is to be performed in Havana, Cuba. Consequently, since Defendant has tendered payment in Cuba in accordance with applicable and governing Cuban law, this Court held that Defendant is not in breach of any contractual duty owed Plaintiff and that no cause of action had arisen in Plaintiff's favor under applicable Cuban law to be enforced by a Florida court. This holding is not affected by Cuba's membership in the International Monetary Fund Agreement.

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1964
WEDNESDAY, JULY 1, 1964

Case No. 32,780

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Petitioner,

v.

LEANDRO GOIRICELAYA UGALDE, *Respondent,*

Case No. 32,803

LEANDRO GOIRICELAYA UGALDE, *Respondent.*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, also known as LA CONFEDERACION DEL CANADA,
Cross-Respondent.

Leandro Goiricelaya Ugalde, respondent and cross-petitioner in the above entitled cause, has filed a motion for recall of the mandate and for a reconsideration and modification of the judgment of this Court, and upon consideration thereof, it is ordered that said motion be and the same is hereby denied.

Office Supreme Court, U.S.
FILED
OCT. [illegible]
[illegible] CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 432

LEANDRO GOIRICELAYA UGALDE,
Petitioner,

vs.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
LA CONFEDERACION DEL CANADA,

MIGUEL MORALES CALVO and MARIA OFELIA ABREU DE MORALES, his wife,
Petitioners

vs.

THE CROWN LIFE INSURANCE COMPANY,
a Canadian corporation

REPLY BRIEF OF PETITIONERS

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 452

LEANDRO GOIRICELAYA UGALDE,

Petitioner,

vs.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
LA CONFEDERACION DEL CANADA,

MIGUEL MORALES CALVO and MARIA OFELIA
ABREU DE MORALES, his wife,

Petitioners

vs.

THE CROWN LIFE INSURANCE COMPANY,
a Canadian corporation

REPLY BRIEF OF PETITIONERS

INTRODUCTION

In this Reply Brief, the following symbols will be used for the purposes of clarity:

"P" will refer to the Petition.
"R" will refer to the Respondents' Brief.
"App." will refer to the Appendix attached to the Petition.

REPLY BRIEF OF PETITIONERS

Respondents contend that the judgment of the Florida Supreme Court was predicated upon:

> "an adequate and independent state ground." (R-1)

This contention is without merit. The Petitioners will demonstrate and the record shows that the decision of the Florida Supreme Court was, and could only have been, predicated upon grounds which raise Federal questions.

Respondents concede that in their appeal from the Trial Court to the Intermediate Court, the District Court of Appeal, Third District, they argued:

(1) "That under Florida conflicts of laws rules the contracts were governed by the laws of Cuba;" and

(2) "That to ignore Respondents' defenses under Cuban law would violate the **Fourteenth Amendment;**"

(3) **"To require payment here would also constitute a violation of International law including the obligations of the United States under the Articles of Agreement of the International Monetary Fund."** (R-4) (Emphasis supplied)

Both the District Court of Appeal and the Florida Supreme Court agreed that the contracts were governed by the laws of Cuba, the District Court of Appeal stating:

> "The policy did not specify the law of any particular jurisdiction to govern it. The contract was made in Cuba[3] and by its terms was to be performed there.[4] Neither Florida nor any jurisdiction other than Cuba had any significant contracts with regards to the obligation of the insurance policy so as to justify or require the contract to be governed by the law of Florida or such other jurisdiction.[5] Under the above conditions it is held uniformally, and in Florida, that when the place of the making and the place of the performance are the same, the law of that jurisdiction determines and controls the

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[3]The policy provided that it became effective upon delivery and payment of the first premium. The first premium was paid in Cuba. That fixed Cuba as the place of the making of the contract. See Equitable Life Assur. Soc. of the United States of America v. McRee, 75 Fla. 257, 78 So. 22; Columbian National Life Insurance Co. v. Lanigan, 154 Fla. 760, 19 So.2d 67.

[4]The policy expressly provided payments thereunder were to be made in Havana, Cuba.

[5]There is authority that does not regard as conclusive the place of making or performance but rather lays emphasis upon the law of the place that has the most significant contacts with the matter in dispute. See Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954). (App.-12)

validity, interpretation, and the rights and obligations under such a contract."

It must be emphasized that the Ugalde Contract with Confederation does indeed expressly provide for payments to be made in Havana, whereas the Calvo contract with Crown Life Insurance Company contract is **silent** as to the place of performance.

The District Court agreed with the insurance companies that the contract in Ugalde was controlled by the law of Cuba, **but went on to hold:**

> "It does not follow, however, that the Trial Court erred as Appellant contends by refusing to dismiss the action. **The courts of Florida were open to the Cuban citizen, while here, to seek redress for a wrong remediable in law, under Section 4 of the Declaration of Rights of Florida.** The error was not in entertaining suit and granting the Summary Judgment for Plaintiff, but in the amount of the judgment." (App.-24) (Emphasis supplied)

The Supreme Court of Florida also agreed that the law of Cuba governed these contracts, stating:

> "The District Court of Appeal opinion, supra, includes an adequate statement of facts and a scholarly and extended treatment of the applicable law. **We disagree with the judgment of the District Court but, to obviate burdenson repetition, we refer to the authority cited in and the rationale of that opinion with approval."** (App.-3) (Emphasis supplied)

So saying the Florida Supreme Court nevertheless reversed the District Court of Appeal and held:

> **"The Florida courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved."**

> "The Petitioner [insurance company] having, upon demand, offered to make payment of the cash surrender of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against the Petitioner." (Emphasis supplied)

The International Monetary Fund Agreement provides that:

> "exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member." Articles of Agreement of the International Monetary Fund, Art. VIII, Sec. 2 (b), 60 Stat. 1401, 1411 (1945).

Thus the Supreme Court of Florida squarely held that because of the International Monetary Fund Agreement Florida courts were obligated to apply Cuban law and also impliedly found and determined that to order payment in this country was contrary to the Fourteenth Amendment to the Constitution of the United States.

It must be borne in mind that both the Confederation Life policy and the Crown Life policy contain the explicit condition that the policy is issued **without** restriction as to "residence, occupation or travels of the insured."

Florida law specifically allows the institution of an action by resident aliens against insurors in the courts of Florida to recover on policies such as the one involved here. See Confederation of Canada Life Insurance Company v. Vega y Arminian, Fla. App. 1961, 135 So.2d 867, cert.den. with opinion, 144 So.2d 805. Having been authorized to do business in Florida, the appellants were required, and it can be assumed that they do, maintain trust deposits with public officials, or trust institutions approved by the insurance commissioner of Florida, of a minimum of $300,000 or its equivalent in assets in compliance with the terms of 624.0211, Fla.Stat., F.S.A., which provides:

> "Any such deposit made in this state shall be held for the protection of the insurer's policyholders or policyholders and creditors in the United States . . . "

Thus, logic dictates that the only predicate for the Florida Supreme Court's decision after having concurred with the rationale of the District Court's opinion that the contracts were controlled by Cuban law, was that it was its understanding that payment in the United States would violate either the International Monetary Fund Agreement, to which the United States and Cuba were both parties at the time, or alternatively, would violate

the Fourteenth Amendment to the Constitution, both of which contentions were argued by the Respondents.

In the light of the foregoing, it is respectfully submitted that the Writ of Certiorari should issue and the matter disposed of on the merits.

Respectfully submitted,

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